

Amendment No. 1 to HB2423

Wirgau
Signature of Sponsor

AMEND Senate Bill No. 2126*

House Bill No. 2423

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 13-6-102, is amended by deleting the section and substituting instead the following:

As used in this chapter, unless the context otherwise requires:

(1) "Abate" or "abatement" in connection with any building means the removal or correction of any conditions that constitute a public nuisance and the making of any other improvements that are needed to effect such a rehabilitation of the building as is consistent with maintaining safe and habitable conditions over its remaining useful life;

(2) "Acceptable petitioner" means:

(A) Any nonprofit corporation;

(B) The municipal corporation within which such subject parcel is located;

(C) The owner or legal occupant of a parcel of real property that is adversely impacted by the condition of the subject parcel; or

(D) Any interested person;

(3) "Building" means any building or structure that is located on the subject parcel;

(4) "Certified person" means any person determined by the court pursuant to Section 4 to be qualified as a receiver or a qualified buyer;

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(5) "Dwelling unit" means a building or the part of a building that is intended to be used as a home, residence, or sleeping place;

(6) "Governmental authority" means any court or governmental, administrative, legislative, regulatory, adjudicatory, or arbitral body, agency, commission, department, board, bureau, tribunal, or instrumentality of the United States or of any state, commonwealth, nation, territory, possession, county, parish, or municipality, whether now or hereafter constituted or existing, having or claiming jurisdiction over the subject parcel;

(7) "Interested person" means, with respect to a subject parcel, any owner, named trustee, or other person that:

(A) Holds, or is the assignee of the holder of, a lien against that subject parcel;

(B) Is named as a nominee or agent of the holder of an obligation that is secured by a deed or a deed of trust affecting such subject parcel;

(C) Holds the benefit of an easement appurtenant to such subject parcel;

(D) Holds the benefit of a restrictive real covenant against such subject parcel; or

(E) Possesses an interest of record in or to such subject parcel;

(8) "Municipal corporation" means any incorporated city or any county, including any county having a metropolitan form of government, and the code

enforcement department or agency or other unit responsible for enforcing building and property conditions in the territorial jurisdiction of the city or county;

(9) "Nonprofit corporation" means any nonprofit corporation that has been duly organized and is in good standing under the laws of this state;

(10) "Owner" means one (1) or more persons, jointly or severally, in whom is vested all or part of the legal title to, or beneficial ownership of, the subject parcel;

(11) "Person" means any individual, firm, corporation, association, trust, partnership, joint venture, limited liability company, governmental authority, or other entity;

(12) "Public nuisance" means any building that is:

(A) A menace to the public health, welfare, or safety;

(B) Structurally unsafe, unsanitary, or not provided with adequate safe egress;

(C) A fire hazard, dangerous to human life, or no longer fit and habitable;

(D) A nuisance, as defined in § 29-3-101; or

(E) Otherwise determined by the court or a municipal corporation to be a violation of any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to any subject parcel;

(13) "Qualified buyer" means any person determined by the court to be a certified person as provided in Section 4;

(14) "Receiver" means any certified person appointed by the court for the purpose of preserving or improving the subject parcel and all of the powers of a

receiver appointed for tax enforcement pursuant to § 67-5-2103 are, as applicable, the powers of a receiver appointed pursuant to this chapter;

(15) "Receiver's lien" means a first priority lien in favor of the receiver against the subject parcel that, with regard to the subject parcel, upon approval of the court, secures:

(A) Any and all direct and indirect expenses and costs incurred by the receiver, including reasonable attorney's fees and costs;

(B) Any and all outstanding municipal fines, penalties, expenditures, and assessments;

(C) Any and all amounts attributable to state and local taxes and assessments, including any and all outstanding amounts secured by delinquent property tax liens; and

(D) A fee, payable to the receiver, equal to ten percent (10%) of the total of the amounts provided under subdivision (15)(A), but in no event less than two thousand five hundred dollars (\$2,500);

(16) "Residential property" means a subject parcel that includes one (1) or more dwelling units that is owner-occupied and the owner's principal place of residence, or that is otherwise intended for single-family residential use;

(17) "Residential rental property" means a building or structure consisting of one (1) or two (2) dwelling units; and

(18) "Subject parcel" means a tract or item of real or personal property that becomes subject to the jurisdiction of a court pursuant to this chapter.

SECTION 2. Tennessee Code Annotated, Section 13-6-105, is amended by deleting the section and substituting instead the following:

This chapter shall apply:

(1) In any county having a metropolitan form of government that has a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(2) In any county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census;

(3) In any county having a population of not less than ninety-eight thousand two hundred (98,200) nor more than ninety-eight thousand three hundred (98,300), according to the 2010 federal census or any subsequent federal census; and

(4) In any county or municipality that has formed a land bank pursuant to § 13-30-104.

SECTION 3. Tennessee Code Annotated, Section 13-6-106, is amended by deleting the section and substituting instead the following:

(a) An acceptable petitioner may file a petition for a judgment in rem against a subject parcel, naming the subject parcel as the defendant and seeking an order that the subject parcel is a public nuisance and for the abatement of the public nuisance. A proceeding pursuant to this section shall be a proceeding in rem. If the applicable municipal corporation is not the acceptable petitioner, then the applicable municipal corporation shall be put on notice of the in rem proceeding and provided with a full copy of the petition as filed by the acceptable petitioner. If the acceptable petitioner has not attached a certificate of public nuisance to the petition, the municipal corporation shall complete an inspection of the subject parcel within thirty (30) calendar days after the first setting of the matter in court, and the court shall promptly schedule a hearing on the issue of public nuisance. At the conclusion of the hearing on the issue of public nuisance, the court shall determine whether or not the issuance of a certificate of public

nuisance is warranted. The court shall dismiss the action if the subject parcel is found not to be a public nuisance by the court.

(b) The petition filed pursuant to subsection (a) must include a draft order of compliance setting forth the relief requested as described in this section and shall specifically request the appointment of a receiver if an order of compliance pursuant to subsection (e) is entered and if the owner fails to comply with such order.

(c) The filing of a petition for a judgment in rem pursuant to subsection (a) shall:

(1) Create a receiver's lien that secures an undetermined amount until the court establishes the amount. The precise amount of the receiver's lien will be established by the court at any time upon the request of any owner, interested person, or the receiver. The receiver's lien shall be a first lien on the subject parcel, which is superior to all prior and subsequent liens or other encumbrances associated with the subject parcel. The acceptable petitioner shall file for record in the register's office of the county an abstract certified by the clerk, within one (1) day of certification by the clerk, containing the names of the parties to the suit, a statement that petition has been filed pursuant to this section, a description of the subject parcel and its ownership, and a brief statement of the nature and amount of the lien sought to be imposed, all in compliance with § 20-3-101, which filing shall act as a lien *lis pendens* against the subject parcel. The outstanding principal amount of the receiver's lien carries interest at a standard statutory rate applicable to judgment liens as provided in § 67-5-2010;

(2) Act as a bar of any transfer of title of the subject parcel or of any interests pertaining to such subject parcel, including, but not limited to, transfers by tax sale or other foreclosure, transfers or creation of lien interests in the subject parcel, or otherwise, from the date of the filing until the petition is dismissed or until specific orders of the court authorizing a transfer of title, if the

petition has attached a certificate of public nuisance issued pursuant to subsection (a); and

(3) Authorize the municipal corporation, in its discretion, to access the subject parcel for boarding, securing, and maintaining the subject parcel at any time if it has been determined by the court that the owner has failed to do so. Any costs incurred by the municipal corporation shall be charged to the owner.

(d) Notice of a petition for a judgment in rem filed pursuant to subsection (a) shall, at a minimum, be provided to each owner and interested person identified by a thorough title search and examination of the subject parcel, including a search of court records of the county where the subject parcel is located. The petitioner shall file with the court a certification that notice has been provided pursuant to this subsection.

Notice shall be provided by:

- (1) Sending a copy of the petition by first-class mail to the last known address of record;
- (2) Posting a copy of the petition in a conspicuous place on the building;
- (3) Publication of the petition in a newspaper of general circulation published in the county where the subject parcel is located; and
- (4) Sending a copy of the petition by first-class mail addressed to "occupant" at the subject parcel.

(e) If the subject parcel is found to be a public nuisance, the court shall issue an order of compliance requiring the owner of the subject parcel to produce a plan for the abatement of the public nuisance. The acceptable petitioner shall file such order in the register's office of the county where the subject parcel is located. The plan must comply with subsection (h) and must be approved by the court. If the owner has commenced work on the subject parcel prior to, or during the pendency of the action, the owner is required to provide a report of the work that has been completed to date, as well as a

plan for the abatement of the public nuisance. Once a plan is approved by the court, the municipal corporation shall provide periodic updates to the court on the owner's progress towards completion of the plan and other relevant information about the subject parcel and surrounding area. Upon a finding by the court that the subject parcel is a public nuisance, the court may award all reasonable attorney's fees and costs to the person filing the petition for a judgment in rem.

(f) If the owner fails to comply with the court's order of compliance pursuant to subsection (e), the court may allow an interested person the opportunity to undertake the work to abate the public nuisance pursuant to a plan that complies with subsection (h) submitted by such interested person.

(g) If the actions pursuant to subsections (e) and (f) fail to abate the public nuisance, the court may authorize a receiver to take possession and control of the subject parcel to abate the public nuisance pursuant to a plan submitted by such receiver that complies with subsection (h). A receiver appointed pursuant to this chapter is not personally liable for actions taken pursuant to the receivership except for misfeasance, malfeasance, or nonfeasance in the performance of the functions of the office.

(h)

(1) Prior to ordering any action be taken to abate the public nuisance, the court shall cause a detailed development plan to be submitted for review, which must include, but is not limited to:

(A) A detailed budget for abating the public nuisance;

(B) A projected timeline for abating the public nuisance;

(C) If repair and rehabilitation of the subject parcel are found not to be feasible, the cost of demolition of the subject parcel or of the portions of the subject parcel that constitute the public nuisance; and

(D) The terms, conditions, and availability of any financing that is necessary to abate the public nuisance or a show of sufficient assets.

(2) If the receiver is submitting the plan, the receiver may petition the court for authority to conduct an auction and sale to a qualified buyer, in accordance with subsection (j), without abatement of the public nuisance upon showing that the terms of the auction minimum bid will include a bond or other security, in an amount fixed by the court, ensuring performance of the remediation within nine (9) months of the date of the auction sale, executed by the qualified buyer in favor of the receiver.

(i)

(1) If the court deems a plan submitted by a receiver to be sufficient and appropriate, the court may empower the receiver to:

(A) Take possession and control of the subject parcel;

(B) Pay all expenses of operating and conserving the subject parcel, including obtaining property insurance;

(C) Pay prereceivership mortgages or installments of such mortgages and other liens; and

(D) Implement the plan; provided, that, if the plan requires demolition, the court shall order that the demolition be done properly and in compliance with applicable laws.

(2) The receiver shall file a report with the court every sixty (60) calendar days and, upon completion of the detailed development plan, shall file a final report with the court indicating that the public nuisance has been abated and moving for the establishment of the full amount of the receiver's lien. Upon a finding by the court that the public nuisance has been abated and establishing the amount of the receiver's lien, the owner shall be put on notice that the owner

has thirty (30) days from such finding to satisfy the receiver's lien in full. If the owner satisfies the receiver's lien in full during such time, the receivership shall be terminated by order of the court.

(j) If the receiver's lien is not satisfied by the owner pursuant to subdivision (i)(2), the court shall direct the receiver to offer the subject parcel for sale in accordance with the following:

(1) The sales procedure shall follow the procedures provided in §§ 35-5-101 - 35-5-109;

(2) The minimum bid at a receiver's lien sale shall be the full amount of the receiver's lien;

(3) If any local land bank formed pursuant to § 13-30-104 notifies the receiver in writing in advance of the receiver's lien sale that it wishes to enter the minimum bid for cash for the subject parcel, then such minimum bid shall preempt all other bids, and the local land bank shall be the prevailing bidder;

(4) If there is no bidder at the receiver's lien auction for greater than the minimum bid, the subject parcel shall be transferred by receiver's deed to the receiver, and there shall be no requirement of cash payment of the minimum bid by the receiver;

(5) When the successful bid is paid in cash, the amount of the minimum bid is paid to satisfy the receiver's lien, including payment to the appropriate property tax officials, of that portion of the receiver's lien that constituted delinquent property taxes. Any surplus shall be distributed, as approved by the court, to the owner and interested persons in the priority in which their interests encumbered the subject parcel prior to the auction; and

(6) The receiver shall report the prevailing bid at the sale to the court, and upon approval by the court, a receiver's deed shall be issued to the

successful bidder and promptly recorded in the office of the register of deeds.

The county trustee shall be allowed a credit pursuant to § 67-5-1903(b)(1) for any local taxes and assessments that are not collected as a result of the failure of the receiver's lien sale to receive a cash payment for the minimum bid pursuant to subdivision (j)(2). Title shall be absolute in the purchaser, and the interests of any interested persons prior to the auction shall be terminated as of the date of the sale. The receivership shall be terminated after the sale by order of the court after a hearing on receiver's motion for termination of the receivership.

(k)

(1) Nothing in this chapter limits the powers granted to a court having jurisdiction pursuant to § 13-6-107.

(2) The monetary and other limitations specified in § 16-15-501(d)(1) upon any court with jurisdiction over an action described in subsection (a) do not operate as limitations upon any of the following:

(A) Expenditures of a mortgagee, lienholder, other interested person, or receiver that has been selected pursuant to subsection (f) or (g) to undertake the work and to furnish the materials necessary to abate a public nuisance;

(B) Any notes issued by a receiver;

(C) Any mortgage granted by a receiver;

(D) Expenditures in connection with the foreclosure of a mortgage granted by a receiver in accordance with subsection (i);

(E) The enforcement of an order of a judge entered pursuant to this chapter; or

(F) The actions that may be taken pursuant to this chapter by a receiver or a mortgagee, lienholder, or other interested person that has

been selected pursuant to subsection (f) or (g) to undertake the work and to furnish the materials necessary to abate a public nuisance.

(3) A judge in a civil action described in subsection (a), or the judge's successor in office, has continuing jurisdiction to review and order correction of the condition of any subject parcel that was determined to be a public nuisance pursuant to this chapter.

SECTION 4. Tennessee Code Annotated, Title 13, Chapter 6, is amended by adding the following as a new section:

(a) Any person seeking to be qualified as a certified person shall make application to the applicable court in the county in which such person seeks to serve, on such form and according to such standards and procedures as such court reasonably may require, including the following, which the court may require to be brought current at any time, as applicable:

(1) An external verification of good standing;

(2) The articles of incorporation and bylaws or formation documents;

(3) Evidence of financial capacity to carry out an abatement plan, including audited financial statements of the person for the past five (5) years, where applicable;

(4) A formal conflict of interest policy governing the staff, officers, and the board of directors, if applicable;

(5) Evidence of the administrative capacity to successfully undertake the abatement plan; and

(6) Any other documents, evidence, or assurances that the court may require.

(b) Any local land bank formed pursuant to §13-30-104 is a certified person for all purposes under this chapter. In the court's discretion, an acceptable petitioner may also be qualified as a certified person who is appointed as a receiver.

SECTION 5. Tennessee Code Annotated, Section 13-30-102, is amended by deleting subdivision (6).

SECTION 6. Tennessee Code Annotated, Section 13-30-110, is amended by adding the following new subsections:

(f)

(1) The corporation may provide written notice to the clerk and master in advance of any delinquent property tax sale auction held pursuant to § 67-5-2005(b) that it wishes to enter the minimum bid for cash for any parcel advertised for sale in such auction, and such minimum bid shall preempt all other bids for said parcel, and the local land bank shall be the prevailing bidder.

(2) If there are no other bidders on a parcel under subdivision (f)(1), such minimum bid shall be accepted for no cash, and the local land bank shall be the prevailing bidder and take title to said parcel in the same manner as a municipality bidding the minimum bid.

(g) Commencing upon the date of transfer of any real property from a land bank to a taxable person or entity, if approved by local government, the land bank shall be entitled to receive payments from the local government equal to fifty percent (50%) of real property taxes collected by the local government for a period of five (5) years.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.